IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 2781 of 2007()

CP.77/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM
CRIME NO.646/03 OF KUNDARA POLICE STATION.

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PETITIONER: ACCUSED NOS. 1 AND 3

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1. NAPOLEON @ UNNI, S/O. GEORGE, AGED 48 YEARS, RANIVILASAM VEEDU,KARIKUZHI, PERAYAM CHERRY MULAVANA VILLAGE, KOLLAM DISTRICT.

2. MERCY,W/O. NEPOLEAN, AGED 34 YEARS, RANIVILASAM VEEDU, KARIKUZHI,PERAYAM CHERRY, MULAVANA VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI. K.SIJU

RESPONDENTS: STATE

STATE OF KERALA REPRESENTED BY THE SUB INSPECTOR OF POLICE, KUNDARA POLICE STATION THROUGH PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY P.P. SRI. JIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.2781 OF 2007

Dated this the 6th day of September, 2007

ORDER

The petitioners face indictment in a prosecution under the provisions of the Kerala Abkari Act. The petitioners were not arrested during the crime stage. Investigation is complete. Final report has already been filed. Committal proceedings has been registered before the learned Magistrate. The learned Magistrate initially issued summons to the petitioners. It is the case of the petitioners that the said summons was not served on the petitioners. The petitioners had no knowledge of the proceedings. Reckoning the petitioners as absconding accused, the learned Magistrate has issued coercive processes against the petitioners. The petitioners find warrants of arrest issued by the learned Magistrate chasing them.

2. The learned counsel for the petitioners submits that

the petitioners are absolutely innocent. He points out that the learned Magistrate had initially thought if fit to issue only summons to the accused. Such summons was never served on the petitioners. Their absence was not wilful or deliberate. The petitioners are willing to surrender before the learned Magistrate. The petitioners apprehend that their applications for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The learned counsel for the petitioners points out that the learned Magistrate is bound to consider the applications for bail in accordance with the dictum in **Sukumari v. State of Kerala** (2001 (1) KLT 22). He further submits that the court is bound to consider the applications on merits and expeditiously as laid down in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339). The petitioners, in these circumstances, have come to this Court with a prayer that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioners.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the petitioners must appear before the learned Magistrate and seek regular bail.

4. I have considered all the relevant inputs. After the

decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself. The applications must certainly be considered by the learned Magistrate in the light of the decision in **Sukumari v. State of Kerala** (2001 (1) KLT 22).

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge